

Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author: Kuehl, AB 196; Burton, SB 542 Analyst: Gloria McConnell Bill Number: AB 196; SB 542Related Bills: _____ Telephone: 845-4336 Amended Date: 07/14/99; 07/12/99Attorney: Janet Ballou Sponsor: _____**SUBJECT:** Child Support EnforcementSUMMARY

This bill would create within the California Health and Human Services Agency the Department of Child Support Services (DCSS) to replace the Department of Social Services (DSS) as California's Title IV-D agency. In addition, this bill would transfer from the county district attorneys (DAs) or the new local child support agencies to the Franchise Tax Board (FTB) the responsibility and authority to enforce collection of delinquent child support. This transfer would create and establish within the FTB a statewide child support delinquency enforcement program in support of the county through the DCSS. Under this program, counties would be required to transfer to FTB all child support accounts greater than \$100 and more than 60 days in arrears or as otherwise defined by guidelines prescribed by the DCSS, in consultation with the FTB. However, the FTB could transfer back to a county or allow a county to retain a child support delinquency if the FTB determines the transfer or retention of the delinquency would enhance the collectibility of the delinquency. Upon transfer of the delinquency, FTB would have the authority to enforce collection of the delinquency as though it were a delinquent personal income tax liability.

For purposes of this analysis, "collections" means the receiving, receipt, and posting (cashiering) of money. "Enforcement" is taking an action to compel payment of a child support or medical support obligation. An action involves both direct enforcement actions, such as seizure of a bank account, and indirect actions that result in payment of support, or suspension of a business or driver's license.

Additionally, this bill repeals and renumbers (recasts) various existing laws, some of which pertain to FTB's child support delinquency enforcement program.

Further, under this bill, certain persons currently required under federal law to file an information return reporting non-employee personal services (independent contractor registry [ICR]) for which \$600 or more was paid would be required to accelerate the reporting of those services and payments to Employment Development Department (EDD), operative July 1, 2000. The reporting would be required by the earlier of 20 days after entering into the personal service contract with aggregate payments in excess of \$600 or when payments made exceed \$600. The information could be used for child support enforcement, tax enforcement and EDD purposes.

This analysis addresses only the provisions directly affecting FTB's child support delinquency enforcement provision. The remainder of the previous analysis of the bill still applies.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ <u>X</u> PENDING

Department Director

Date

Gerald Goldberg

8/02/1999

BOARD POSITION

AB 196 -- Pending. In its meeting of July 6, 1999, the FTB took a position of "neutral, point out problems" on the May 18th version of this bill, specifically pointing out the concerns with that version's six-county pilot.

SB 542 - Pending In its meeting of July 6, 1999, the FTB took a position of support on the July 6th version of this bill that included only intent language.

EFFECTIVE DATE

This bill would be effective January 1, 2000; however, the various provisions are operative as follows:

- Beginning January 1, 2000, the DCSS would be created and replace the DSS as California's Title IV-D agency.
- On January 1, 2000, the responsibilities and authorities for the enforcement and collection of child support delinquencies would be transferred from the counties to FTB.
- On January 1, 2001, the transition of duties from the DA to the local child support agency would begin.
- By July 1, 2001, automation necessary to accommodate FTB's augmented collection activities would be operational.
- By December 31, 2002, the transition of duties from the DA to the local child support agency and the transfers of the delinquencies to FTB would be completed.

PROGRAM HISTORY/BACKGROUND

One of FTB's core competencies is the collection of accounts receivable (delinquencies), which includes the comprehensive management thereof. Comprehensive accounts receivable management requires effective and efficient automated systems, the establishment of policies and procedures, and a trained enforcement staff to ensure that every account goes to the right resource at the right time to give the account the highest probability of collection. Under FTB's comprehensive management of its tax accounts receivable, FTB decides the manner in which debtors are brought into compliance and the amounts collected are maximized. While FTB's existing child support delinquency enforcement program has been viewed as a successful collection program, DAs have the overall responsible for managing the accounts receivables of the child support delinquencies.

Presently, FTB is designing and developing a new accounts receivable enforcement system for the enforcement of personal income tax (PIT) and bank and corporation tax (BCT) delinquencies (Accounts Receivable Collection System [ARCS]). PIT and BCT systems are scheduled for implementation March 2000 and June 2000, respectively.

ARCS is a client-server based computer system that can manage up to 4 million accounts in a completely paperless format. It routes accounts from action to action according to programmed decision rules that reflect the best available knowledge about the sequence of actions most likely to collect that account. ARCS will evaluate account characteristics daily to determine which accounts need action taken that day. To the maximum extent feasible, automated data exchange mediums are used in conjunction with ARCS.

In addition to routing accounts, ARCS will update collection records for each account and generate billing notices, levies and bankruptcy claims. ARCS is designed with built-in flexibility and expandability to accept additional debt types and volumes, so that the system can be augmented with hardware and software to meet increased workloads, e.g., child support enforcement. ARCS has the capability to process more than 220 million records of asset information to improve the state's ability to locate debtors and their income sources.

ARCS uses a software component called Strata as a decision-making tool in the management of accounts receivable. Strata uses statistically validated predictors of an individual's debt-paying characteristics to categorize accounts and assign them to the collection strategy most likely to produce results. Once the account has been assigned to a strategy, the system manages the arrearage at all times ensuring that the right collection action will be taken on every account at the right time. The right action may consist of an automated action or of a staff person taking an action. Thus, automated account management incorporates both automated and manual activities.

When the debtor contacts FTB regarding tax collection matters, a trained collector works with the debtor to develop a plan to bring the debtor into compliance with the current year's tax liability and to resolve the delinquency over time. Installment payment agreements and electronic funds transfers (EFT) directly from the debtor's bank account are critical tools in achieving this second objective. FTB's experience with installment agreements using EFT shows a reduction in default rate from 40% to 2.5%.

As a part of its automated tax enforcement processing, FTB has automated the process of filing claims in Bankruptcy Court.

For those obligors who reside outside of and have no assets in California and owe a child support delinquency to California residents, FTB contracts with private collection firms to enforce that delinquency. The private collection firms charge FTB for the cost of collection services at a rate of approximately 18% of the total dollars collected on each case. Approximately 17% of the cases in FTB's current inventory are interstate cases. FTB and the counties have limited experience in collecting interstate debt on a large scale basis.

SPECIFIC FINDINGS

Currently, Title IV-D of the federal Social Security Act requires each state to create a program to locate noncustodial parents, establish paternity, establish and enforce child support obligations and collect and distribute support payments. Title IV-D requires each state to have a plan that provides for a "single and separate organizational unit" to administer its child support plan. Under California law, DSS, which is within Health and Human Services Agency, is designated California's single organizational unit to administer the state plan

for securing child support, and its director is generally required to set forth the related policies (W&IC 11475).

The DAs are delegated by law responsibility for establishment, enforcement and collection activities, which include the establishment of paternity (W&IC 11475.1) and securing a wage assignment by court order or other legal means (support orders). The DA may enforce a support order issued to any noncustodial parent for the benefit of any custodial parent, regardless of whether the custodial parent is or has been on welfare.

Beginning January 1, 1998, under California law, for those support orders that the DAs are responsible for enforcing, the DA is required, unless specifically excepted by DSS, to refer cases that are 91 days delinquent to FTB for enforcement as though they are delinquent final personal income taxes. Cases more than 30 but less than 91 days past due may be voluntarily referred to FTB for enforcement as though they are delinquent final personal income taxes. Additionally, DAs may voluntarily refer current child support obligations to FTB for issuance of a wage assignment and collection of the resulting payments. However, to date DAs have expressed little interest in referring such cases to FTB, and staff has suspended implementation of the process/system that would be required if FTB were to issue and collect wage assignments for current support.

Once an account is referred to FTB for enforcement, FTB is required to send a notice requesting payment to the obligor at least 20 days before it begins collection activities. Upon receipt of the notice, if the obligor does not contact FTB or the county to make payments or otherwise resolve the matter, FTB's automated computer system will begin searching for employer and bank account information (asset information). Once assets are located the automated computer system will issue an appropriate withholding orders. When an employer is identified and an earnings withholding order is issued by FTB, the county sometimes rescinds the referral of the delinquency and may replace FTB's earnings withholding order with a wage assignment for the current support and an amount for the delinquency. Typically the amount added to the wage assignment for the delinquency is less than the amount subject to garnishment via FTB's earnings withholding order.

Though FTB presently has the authority to attach disability payments, workers compensation and unemployment insurance to collect child support delinquencies, it has not developed the computer interfaces needed to attach these moneys on an automated basis. Additionally, though FTB presently has the authority to issue warrants for the seizure and sale of vehicles, or to attach funds from the day-to-day operation of a business of the obligor (till tap or keeper action), these actions have not routinely been initiated by FTB because it has been focusing on refining its automated process and phasing all participating counties into the program. Further, even though FTB has the use of all enforcement remedies available to the DA and technically may have the authority to suspend business licenses or driver's license for the failure to pay a child support delinquencies, the use of these remedies has been left to the DAs.

To administer FTB's existing program, FTB receives from the DA only the identity of the obligor and the amount due. After FTB receives and collects payment, it notifies the Controller of the amount collected and to which referring county to transfer that amount. The DA maintains the case file information and disburses FTB child support collections.

Child support delinquencies that accrue after the custodial parent received aid from the state and collected after October 1, 1997, will be distributed to the custodial parent first rather than to the state for reimbursement of the costs of that state aid. Beginning October 1, 2000, collections of child support delinquencies that accrued before the custodial parent received aid from the state also will be distributed to the custodial parent first rather than to the state for reimbursement. In addition, regardless of when the delinquency accrues or is collected, the custodial parent may be eligible for the first \$50 collected, as an incentive payment. Therefore, while FTB knows the amount it collects, and in the case of multiple child support delinquencies for the same person can provide basic accounting for the multiple collections, FTB does not know how the amounts are to be disbursed and what part is to be applied to the delinquency, if any. FTB relies on counties to provide updated balances on a timely basis.

Under this bill, DCSS would replace DSS as California's single organizational unit to administer the state plan for securing child support, and its director is generally required to set forth the related policies (former W&IC Section 11475(a) would be recast as FC 17202 in this bill). The county local child support agency would replace the DAs for the establishment, enforcement and collection activities, which include the establishment of paternity (former W&IC Section 11475.1 would be recast as FC 17400) and securing a wage assignment by court order or other legal means (support orders). FTB would support the counties by managing the state's child support delinquency enforcement program, as follows:

(1) The transfer of the responsibility and authority from the county to FTB would be effective January 1, 2000; however, automation necessary to accommodate FTB's augmented collection activities would be not be operational until July 1, 2001. To accommodate automation development and the workload growth, the transfers to FTB would be phased in over 36 months.

(2) Upon transfer of the delinquency, FTB would have the authority to enforce collection of the delinquencies as though they were a delinquent personal income tax liability. Existing law pertaining to FTB child support delinquency program generally would continue: (1) at least 20 days before enforcement activities is to begin FTB is required to send to the obligor notice advising the obligor that failure to pay will result in enforcement actions; (2) FTB would have the authority to enforce collection using the services, information or enforcement remedies available to either FTB (to enforce collection of a delinquent personal income tax liability) or the county or Title IV-D agency (to enforce child support delinquencies or locate absent or noncustodial parents for purposes of collecting delinquent child support); (3) FTB's collections would be sent to the counties for disbursement.

(3) Counties would be required to transfer to FTB all child support accounts greater than \$100 and more than 60 days in arrears or as otherwise defined by guidelines prescribed by the DCSS, in consultation with the FTB.

(4) The transfer of a delinquency to FTB could not be rescinded by the county but instead would remain with the Franchise Tax Board. However, the FTB could transfer to or allow a county to retain a child support delinquency if the FTB determines the transfer or retention of the delinquency would enhance the collectibility of the delinquency.

(5) FTB would work with the counties for total resolution of the child support obligation. The goal would be for obligors to be in compliance with their current support obligations, in conjunction with payment of their arrearage. FTB would work with the counties to resolve any issues regarding wage assignments and

could modify as necessary any wage assignment administratively-issued by a county.

(6) FTB would seek, in cooperation with the DCSS, any federal waivers necessary for the efficient administration of this program, including any waivers relating to wage assignments.

(7) All counties in California would be required to participate in the statewide child support delinquency enforcement program, including the federally mandated financial institution data match and levy process.

(8) In the event the debtor owes both delinquent child support and personal income taxes, payment of the delinquent child support would be enforced by FTB before the personal tax debt.

Policy Considerations

- FTB would be transferred the responsibility to manage the accounts receivable a year before the transition from the DAs to the local agency would begin. FTB's phase-in of the transferred cases would begin during the period of transition; yet the transfer and transition are scheduled for completion at the same time, December 31, 2002. To the extent possible, additional thought should be given to the overall scheduling of events as it may be less disruptive to collections if administratively the transfer of cases to FTB were accomplished either well before, well after or in conjunction with the plan for the transition from the DA to the local agency.
- The workloads created by this bill are in keeping with FTB's recognized core competency of enforcement of child support delinquencies. However, the bill could be made clearer that FTB would not be performing functions that are case management.
- In the event the taxpayer owes a personal income tax and a child support delinquency, this bill changes existing enforcement priority by giving the enforcement of child support priority over taxes. This priority is in keeping with current business practice under other California laws and the spirit of federal law regarding child support enforcement. Federal regulations require that once an employer is located, an earnings assignment must be issued and take precedent over any other earnings assignment, withhold order and/or other levy.

Implementation Considerations

With the responsibility for comprehensive accounts receivable management, FTB's first goal would be to work with counties to bring obligors into compliance with their current support obligations and second to resolve their arrearage without causing an unreasonable financial hardship on obligors.

FTB ultimately would be responsible for the collection of all child support accounts in California that exceed \$100 in delinquent amounts and are over 60 days past due. However, as necessary to maximize efficiencies, an account could be transferred by FTB back to the county or the county could be allowed to retain the account. Staff recognizes the threshold for transferring the responsibilities, authority and amount of delinquency is

subject to change through guidelines prescribed by the DCSS, as the title IV-D agency.

To establish the comprehensive management of child support delinquencies, FTB staff anticipates it would implement the technologies and increase enforcement staff, as follows:

(A) **Child Support ARCS and Strata.** FTB would modify PIT ARCS to accommodate the needs unique to child support delinquency enforcement. All collection activity - both automated and manual intervention - would occur within this processing engine. Modifying PIT ARCS, which would take 12 to 18 months, would significantly reduce the time otherwise needed to start the expanded collection activities. With the PIT ARCS modification, staff anticipates the augmented collection activities could begin by July 1, 2001. The components of this modification process include software modifications, changes to the user interfaces, business process re-engineering and full system testing.

The implementation of Child Support ARCS involves identifying and implementing the automated functions necessary for accepting data from the 58 counties and putting it into a format that Child Support ARCS could process. The interface also would contain collection information and use this information to update balances due from information updates from the counties. Finally, the interface would provide payment information back to the counties.

However, meeting the July 1, 2001, deadline, would cause resources to be diverted from the PIT and BCT ARCS projects to Child Support ARCS. This would delay the currently scheduled implementation of PIT ARCS from March 2000 to between June and September 2000 and BCT ARCS from June 2000 to between April and June 2001.

(B) **Information System Exchanges.** Staff anticipates it would use automated means to obtain information from other data sources within and without FTB. Staff anticipates it would have the capability of interfacing via automation with tax and motor vehicle or driver's license records to obtain address information and interface with other governmental agencies to garnish disability payments, unemployment benefits and workers compensation.

(C) **EFT.** Staff anticipates it would use EFT capabilities that would allow direct payment from the obligor's bank account.

(D) **Increase Enforcement Staff.** Once Strata identifies an account with no readily identifiable assets but the potential for collections, the case would be referred to FTB's enforcement staff to locate and/or make contact with the obligor and/or locate assets (skip trace). Manual child support enforcement activities would begin in a manner comparable to those used to collect taxes.

FISCAL IMPACT

Departmental Costs

Preliminary research indicates FTB's departmental costs would increase approximately \$3 million during fiscal years 1999/00 and 2000/01, \$8 million the third year, 2001/02 and \$7 million annually thereafter. The following table reflects a general breakdown of the costs and positions it would take to administer the statewide child support delinquency enforcement program for the first three years, which totals approximately \$14 million. However, as more information is obtained, these estimates may be revised.

These costs are based on the assumption that FTB would be engaged in accounts receivable management of approximately 900,000 child support accounts upon transfer of the responsibilities (400,000 delinquent cases presently held by the counties plus FTB's existing inventory of 500,000) with a net increase of accounts transferred to FTB annually of approximately 200,000. These costs also assume that 65% of the payments would be received through EFT. As a result of the transfer of these accounts, increases are expected in the number and complexity of inbound phone calls. More payments would be cashiered at FTB. Outbound enforcement calls would be routinely made. Additionally, costing for filing bankruptcy claims, skip tracing, and resolving debtor hardships also were taken into consideration.

Assuming existing funding practices would continue, 66% of FTB's costs would be paid through federal reimbursement and 34% from General Fund.

Cost Element	Amount (in millions)	Number of Positions
Implementation of ARCS/Strata	\$ 7.0	19.5 plus other one time costs
Staff to make outgoing calls	\$ 4.0	61
Staff to receive incoming calls	\$ 0.5	10
Additional cashiering staff	\$ 0.5	12
Additional technology support	\$ 1.5	15
Additional enforcement support	\$ 1.0	22
Total	\$14.0	139 (of which 120 are on-going)

To the extent that FTB's efforts take over arrearage work currently done by the counties, there could be cost savings to the counties. However, since FTB's costs would increase, the new program proposed by this bill may not result in overall cost savings. Furthermore, counties may incur additional costs for meeting the interface needs of the new system.

Collection Estimate

The potential increase in collections attributable to FTB's proposed new enforcement program is unknown. However, FTB estimates that implementation of a comprehensive accounts receivable management system would increase statewide collections of child support by up to approximately \$70 million

annually. This analysis is based on the likely benefits by which a full, centralized, automated accounts receivable management effort would increase collections. This estimate assumes that only a small percentage of the total delinquent cases would be those cases where the obligor is in compliance with making payments as required by court order and, therefore, FTB could take no additional actions. Also, this estimate assumes that any accounts returned to the counties, as allowed by this bill, would have a minimal impact on collections. This estimate further assumes that federal law and regulations will not constrain FTB from fully applying this new enforcement program to the collection of child support delinquencies, including its enforcement remedies established in the Revenue and Taxation Code.

FTB evaluated the reasonableness of its estimate of the improvement in the collection of child support arrearages by compiling a database of obligors and matching these obligors to their tax information. FTB then applied assumptions about the percentage of income that it might collect.

Collection Discussion

Staff based the collection estimates on its experience collecting delinquent child support and assumptions regarding the effect of applying the new enforcement program (new technologies, additional enforcement staff and changing the enforcement processes accordingly) to a greater number of child support delinquencies, i.e., the 400,000 delinquent cases presently held by the counties, 500,000 delinquencies in FTB's existing inventory, and the projected new 200,000 accounts that will be transferred annually (growth):

- For the delinquencies that counties are not presently referring to FTB and the growth, staff projected the new enforcement program would generate an additional \$43 million.
- For FTB's existing inventory, staff projected the new enforcement program would increase by approximately 2% the number of obligors that are presently being collected from, for an estimated \$17 million in additional collections.

Staff also is assuming that FTB's activities would result in counties bringing more debtors into compliance with current support orders, thereby generating approximately \$10 million in additional statewide collections for current support.

Although FTB would introduce to child support collections new technologies, additional staff and changes in the enforcement processes, at the same time, several factors dictate a conservative estimate:

- Possession of little information on the characteristics of the debtor population and a lack of consistent, complete, historical data about child support collections in general. Currently, FTB lacks experience with the impacts of bringing all of its capabilities to the collection of child support arrearages.
- The percent of cases established without debtor contact. In about 75% of all child support cases, the court order is established without debtor contact. In these cases, FTB may not have information necessary to locate the debtor. Also, the current support amount (which will affect

any arrearage amount) may have been determined without regard to the debtor's ability to pay. Cases such as these would lower the rate of improvement.

- No data or experience to accurately predict the flow of new accounts. Since it is known that the newer the case, the better the collection potential, the age of the arrearages referred to FTB would have a major impact on collection statistics. The proposed change in the criteria for referral would affect the flow of arrearages to FTB, but it is not known by how much.
- Timing considerations. At present all 58 counties may not have the resources and technology capabilities to meet the phase-in schedule or provide the timely information FTB's system would need on a regular basis to ensure program success. Even for those counties that presently may have the resources and capabilities to meet the phase-in schedule, their resources and capabilities may be strained considering that during the time they may be phasing-in to FTB, they also may be transitioning into the local child support agency.